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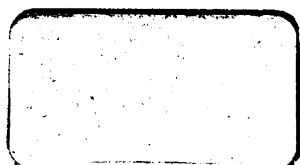
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THE

ACTS OF THE LEGISLATURE

OF THE

STATE OF NEW JERSEY

UNDER WHICH

The Essex County Park Commission

IS ORGANIZED

**and the decisions sustaining
their constitutionality.**

THE
ACTS OF THE LEGISLATURE

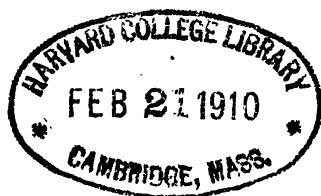
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PUBLISHED BY
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The Committee

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CHAPTER CLVI.

LAWS 1894.

An Act to establish boards of county park commissioners and to define their powers and duties.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,*

1. That in any county with more than two hundred thousand population, it shall be lawful for the justice of the supreme court presiding in the courts of such county to appoint five persons, to be known as the ——— county park commissioners, who shall hold their office for two years from the date of their appointment, and shall serve without compensation; and if vacancies happen by filled by such justice and the persons appointed filled by such justice, and the persons appointed to supply such vacancies shall be appointed for the unexpired terms only; said commissioners shall consider the advisability of laying out ample open spaces for the use of the public in such county, and shall have authority to make maps and plans for such spaces and to collect such other information in relation thereto as the said board may deem expedient, and shall, as soon as conveniently may be within the term aforesaid, make a report in writing of a comprehensive plan for laying out, acquiring and maintaining such open spaces.

Justice of Supreme Court shall appoint.

Commissioners shall have no compensation. Vacancies shall be filled for unexpired terms only. Duties of Commissioners.

2. That said commissioners may employ such assistants as they may deem necessary and may expend such sums therefor and in the discharge of their duties, including the actual travel-

May employ assistants. Traveling expenses may be paid. Expenditures shall be certified to.

Board of Chosen
Freeholders.

ing expenses of said members, as they may deem expedient, not exceeding, however, the sum of ten thousand dollars; and such expenditures shall, from time to time, be certified by said board to the said justice of the supreme court, who, if satisfied of the correctness thereof, shall order the payment of the same by the board of chosen freeholders of such county, who shall order the county collector to pay the same out of the funds appropriated or to be appropriated for the maintenance of highways and bridges in such county or of any unexpended balance.

3. That this act shall take effect immediately.
sembly of the State of New Jersey,

Approved May 8, 1894.

CHAPTER XCI.

LAWS 1895.

An Act to establish public parks in certain counties in this state, and to regulate the same.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey.

1. That in any county of this state containing a population of more than two hundred thousand it shall be the duty of the justice of the supreme court presiding in the courts of such county, as hereinafter provided, to appoint five persons a board of commissioners to be known as "the ——— county park commission" (inserting the name of the county in and for which such commissioners are appointed); the commissioners first appointed under the provisions of this act in any county shall hold office respectively for the term of one, two, three, four and five years, as indicated and fixed in the order of appointment, and all such commissioners, after the first appointment, shall be so appointed for the full term of five years; vacancies in the said board happening by resignation or otherwise shall be filled by such justice, and the persons appointed to fill such vacancies shall be appointed for the unexpired term only; such persons so appointed, when duly qualified, constituting such board of park commissioners, and their successors, are hereby created a body politic, with power to sue and be sued, to use a common seal and to make by-laws; the members of any such board shall serve without compensation; their necessary expenses shall be allowed and paid, and no person employed by the said board shall be a member thereof; before entering upon the duties of his office, each of the

Justice of Supreme Court shall appoint Commissioners.

Justice shall fill vacancies.

Board constituted a body politic.

No compensation allowed.

Employees shall not be members.

Board shall choose its own officers and employees, and fix their duties and compensation.

members of said board shall take and subscribe an oath or affirmation, faithfully and impartially to perform the duties of his office, which oath or affirmation shall be filed in the office of the clerk of the county wherein the board of which he is a member is appointed; every such board shall annually choose from among its members a president, vice-president and treasurer, and appoint a clerk or secretary and such other officers and employees as it may deem necessary to carry out the purposes of this act; it may also determine the duties and compensation of such appointees and remove them at pleasure, and make all reasonable rules and regulations respecting the same; every such board shall have a suitable office, where its maps, plans, documents, records and accounts shall be kept, subject to public inspection, at such times and under such reasonable regulations as the board may determine.

Power to maintain parks, and acquire land for same.

2. [Amended by Chapter LI, Acts 1899, to read as follows:] That every such board shall have power to acquire, maintain and make available to the inhabitants of the county wherein it is appointed, and to the public, parks and open spaces for public resort and recreation, and shall have power to locate within the limits of said county such public parks and places, and for these purposes shall have power to take in fee or otherwise, by purchase, gift, devise or eminent domain, lands and rights in lands for public parks and open spaces within said county; deeds of conveyance therefor shall be made to the said board by its corporate name, and it shall be the duty of such board to preserve and care for, lay out and improve any such parks and places, and to make rules for the use and government of the same; such board shall have power also to connect any road, park or public open space with any other

Duty of Board.

May connect with other parks or public roads.

park or public open space, and also with any city or municipality of the said county by a suitable roadway or boulevard, and for such purpose shall have power to exercise any of the rights and powers granted by this act in the manner herein prescribed, and also to take or acquire in fee or otherwise. In the corporate name of the said board for the benefit of the said county, by purchase, gift, devise or eminent domain, any lands or rights in land, and easements or interests in lands within the said county, although the lands so taken, or any part thereof, be already a street or way, and to construct and maintain along, across and upon and over the same, or any other land acquired by the said board under this act, roadways, parkways or boulevards, and to grade and improve the same, to regulate the width thereon of sidewalks, roadways, service ways, bridle paths, bicycle paths or roads, to plant within the same trees and shrubbery, to construct such sidewalks, roadways, service ways, bridle paths, bicycle paths or roads, to pave the same, or any part thereof, in such manner and of such material as said board may deem advisable, which said grading, construction and improvement may proceed simultaneously, or from time to time, and in and upon such parts or sections of said parkways or boulevards, as may be determined and prescribed by said board from time to time; such board also shall have power and authority to determine and to prescribe in the case of any new parkway or boulevard laid out and opened by such board, the lines for the frontage of any and all buildings to be located on the lands fronting on such new parkway or boulevard; *provided, however*, that the concurrence of the common council or other body having authority over highways shall be necessary

Build and maintain roads, etc.

Proviso.

to take or appropriate any portion of an existing street or road.

Proceedings
before purchase
or condem-
nation.

3. That the said board, before proceeding to purchase or condemn lands for a public park or place, shall determine upon the location and quantity of land to be included in any park or place, and cause a survey thereof to be made and a map showing the lands to be embraced therein, which map shall be kept by the said commissioners in their office, and the boundary lines of every such park or place shall be recorded in a book to be kept for that purpose by said board; and before laying out and opening any roadway, parkway or boulevard, they shall cause a survey of the same to be made and a map thereof to be filed in their office, showing the termini of the said roadway, parkway or boulevard, including the courses and distances, the names of the several owners or reputed owners of land through which the same will pass, so far as the same can be ascertained, and the streets or roads which may be included therein; *provided, however,* that the said board shall not be obliged to disclose such locations, surveys or maps to public inspection until it has taken proceedings to condemn lands or rights in lands necessary therefor.

Proviso.

Proceedings to
condemn lands.

4. That when the said board shall deem it proper to acquire lands or rights in lands for any public park or place which they have located, as herein provided, and the said board or its agents duly authorized cannot agree with the owner or owners of such lands and rights in lands, as to the price and terms of the purchase thereof, or when by the legal incapacity or absence of such owner or owners, no agreement can be made for the purchase thereof, a description in writing of the lands or rights in lands so desired, with the name or names of the occupants, if any there be,

and of the owner or owners, and other parties interested, if known, and their residences, if the same can be ascertained, by the board or its agents, shall be presented to one of the justices of the supreme court of this state, who shall thereupon cause such board to give notice thereof to the persons interested, if known, and in this state, or if unknown, or cannot be found, or out of this state, to make publication thereof as he shall direct, for any period not less than ten days; and assign a particular time and place for the appointment of commissioners as hereinafter provided, at which time, upon satisfactory evidence to him of the service or publication of such notice, he shall appoint under his hand three impartial and judicious freeholders, residents in the county in which such lands or rights in lands are situate, to examine and appraise the said lands or rights in lands and assess the damages, upon such notice to be given to the persons interested as shall be directed by the justice making such appointment, not less than ten days; and it shall be the duty of the said commissioners (having first taken and subscribed an oath or affirmation before some person duly authorized to administer the same, faithfully and impartially to examine the matter in question, and to make a true report and appraisement as aforesaid in writing, according to the best of their skill and understanding) to meet at the time and place appointed, and to proceed to view and examine the lands or rights in lands, and to make a just and equitable appraisement and assessment as aforesaid, to be paid by the said board, which report shall be made under the hands of the said commissioners, or any two of them, and within fifteen days thereafter, together with the description of the lands or rights in lands, and the appointment or oaths or affirma-

Fees and expenses to be allowed and paid.

tions aforesaid shall be filed in the clerk's office of the county within which such lands are situate, to remain of record therein, and thereupon, and on payment or tender of payment of the amount so awarded to the party or parties entitled thereto, the said board is authorized and empowered to enter upon and take possession of the said lands and rights in lands; and all titles thereto for the purpose for which the same is taken, shall upon payment, or tender, pass from the said owners and parties interested to the said board in trust for the said county in and for which they are appointed; and in case of any dispute between any owner or other party interested as to their respective rights or shares in and to the sum so assessed and ascertained under this act, then the said board is authorized to pay the sum assessed to the clerk of the county in which said lands are situate, to be paid out and disbursed to or among the parties entitled to the same, by the order of the circuit court of the said county, upon the application of any one or more of the said parties interested, on due notice to the others; and the said justice shall, upon the application of either party, or on reasonable notice to the others, tax and allow such costs, fees and expenses to the commissioners and other persons performing any legal duty in the premises as he shall think equitable and right, which shall be paid by the said board; and if any or all of the said owners or other parties interested shall be absent from this state, or under any legal incapacity that disqualifies them from receiving legal payment of the money awarded, then it shall be the duty of the said board to pay the amount awarded to such person or persons, to the clerk of the county in which said lands or rights are situate; and it shall be the duty of the said clerk to receive the same, to be paid to the parties entitled

thereto by the order of the circuit court of the said county, upon application made therefor, and every and all of such payments to the clerk shall be equivalent to payment to the parties entitled thereto, and shall operate to transfer the title of the said lands or said rights in lands to the said board, as if payment was made directly to the said parties; *provided always*, that should the said board, or the owner or owners of said lands or rights in lands feel aggrieved by the report and award of the said commissioners, they, or either of them, may appeal from the said appraisement and award in respect to their interests therein, to the next circuit court of the county wherein the said lands are situate. Proviso.

5. That every appeal from the appraisement and award of the said commissioners shall be made in the form of a petition to the said court, and notice thereof shall be given to the other parties within fifteen days after the filing of the commissioners' report and award, which proceedings shall vest in the circuit court the authority and power to hear and determine the question of the value of the land or rights in lands and the damages sustained, if any, and thereupon the said court shall direct a proper issue to be framed between the said parties for the trial of the said question, and order a jury to be struck for the trial of the same, and a view to be had of the premises by the said jury, and the said issue shall be tried upon like notice and in like manner as other issues of fact are tried in said court; and it shall be the duty of the said jury to assess the value of the said land in question or rights in land, and the damages sustained, if any; and the party or parties appealing shall recover costs in such suit, if Proceedings in cases of appeal.

they shall succeed at the trial on the appeal in changing the valuation or assessment in his, her or their favor, and shall pay costs, if they shall fail so to do, but no appeal shall prevent the said board from taking the land upon filing the commissioners' report and award, and payment or tender to the parties of the amount thereof, as herein provided; that upon the verdict of the jury fixing the value of the lands or rights in lands and damages, the court shall enter judgment for the amount thereof, with or without interest and costs, according to the provisions of this act and the principles of law applicable to the trial of similar issues in other cases, and the judgment so entered shall be the sum which the owner or owners and other persons interested are entitled to have from the said board for the said lands or rights in lands and damages, and may be enforced in manner and form similar to other cases in which judgment is pronounced in the said court, and when the commissioners' award is paid by the said board into court, as hereinbefore provided, it shall be the duty of the court to order the moneys so paid into court applied to the payment of the said judgment, and the surplus, if any, repaid to the said board.

Board may establish, change or alter grade of highways, and improve same.

6. That the said board shall have power and authority not only to lay out and open roadways, parkways and boulevards, connecting parks and open spaces as herein provided, but shall have authority to establish the grade of such highways, and change and alter the same, to grade, curb, flag, pave and otherwise improve the said parkways, roadways and boulevards, and to regulate the use thereof.

Notice of opening or improvement of roadways to be advertised.

7. That whenever the said board shall determine to open and lay out a boulevard, parkway or road-

way, or to make any improvement thereof which shall require the condemnation of lands or rights in lands, the said board shall give notice by publication, at least ten days, in one or more of the newspapers circulating in the county wherein the lands to be condemned are situate, of its intention to apply to the circuit court of the said county for the appointment of three disinterested commissioners to make an appraisement of the value of the lands and rights in lands necessary to be taken in the judgment of the said commissioners, and the damages occasioned thereby, for the opening and laying out of any boulevard or roadway, or for the improvement thereof; and also to ascertain, fix and determine the amount of the special benefits which the laying out of the said street or the improvement thereof will confer upon any owner of property benefited thereby; and at the time and place specified in such notice the said court shall appoint three disinterested freeholders resident in the said county to make a just and true appraisement of the value of the lands or rights in lands to be condemned and taken by the said board, for the purposes specified in the said notice and the damages, and also to make a just and true estimate and appraisement of the special or peculiar benefits which the opening of any such boulevard, parkway or roadway, or the improvement thereof, may confer upon any owner of property benefited thereby, in proportion, as nearly as may be, to the benefit which each owner may be deemed to acquire; and the said commissioners, when so appointed, shall forthwith take and subscribe an oath or affirmation, faithfully and impartially to perform the duties imposed upon them by law, and such oath or affirmation shall be filed in the office of the clerk of said county; and the said commis-

Court shall appoint disinterested persons to appraise values and benefits.

Notice of time
and place of
meeting shall
be advertised

Commissioners
shall report to
the court.

Court shall give
notice of hear-
ing of objections

Commissioners
shall revise re-
port if required

sioners shall fix a time and place when they will hear the persons interested in the property to be taken and appropriated as aforesaid and in the benefits to be conferred by the proposed improvement, of which time and place public notice shall be given by the said commissioners for at least ten days prior to the day of meeting in two or more of the newspapers published and circulating in the said county, and after having viewed the premises and heard the parties interested, the said commissioners shall proceed to estimate and fix the value of the lands and rights in lands taken and the damages caused by such taking, and also ascertain and determine the amount of special or peculiar benefits conferred upon the owners of property benefited by the said opening or improvement, in proportion, as nearly as may be, to the benefits which each owner shall be deemed to acquire, and to make report of their assessments to said court; the said commissioners may report the damages awarded and the benefits assessed in any case in the same report or separately as they may determine, and upon the coming in of any such report, signed by the said commissioners, or any two of them, the said court shall cause such notice to be given as it shall direct of the time and place of hearing any objections that may be made to such award or assessment, and after hearing any matter which may be alleged against the same, the said court shall, by rule or order, either confirm the said report or refer the same to the same commissioners for revision and correction; and the said commissioners shall return the same, when referred to them again, corrected and revised, or make new report thereof to the said court without unnecessary delay, and the same, on being so returned, shall be confirmed or again referred by the said court in manner

aforesaid, as right and justice may require, and so from time to time until a report shall be made or returned in the premises, which the said court shall confirm, and such report, when so confirmed, shall be final and conclusive, as well upon the said board of commissioners as upon the owners of any land and real estate, or rights therein affected thereby, and the said court shall thereupon cause said report so confirmed to be filed in the office of the clerk of said county, there to remain of record; and the said court shall have power and authority to make such rules for the regulation of the practice and procedure under this act as shall be deemed expedient and consistent with its provisions; the said court shall, upon application made by the said board or on its behalf, fix and determine the compensation to be paid the commissioners so appointed, and allow any other expense necessarily incurred in making any such assessment, all which shall be paid by the said board of park commissioners; *provided, however*, that the cost and expense of making any assessment for benefits, including the fees of commissioners, may be included in making up the entire cost for the purpose of such assessment.

Court shall confirm and file report.

Proviso.

8. That in every case in which damages are awarded under the provisions of this act to an owner or owners of lands, and benefits are assessed against the same owner or owners, it shall be lawful for the said board, when both the award of damages and the assessment of benefits have been finally confirmed, to deduct the amount of the benefits assessed from the damages awarded, and to set off such benefits against such damages by proper charges and credits, in order that the ex-

Benefits may be deducted from damages awarded.

cess of damages, if any, shall be paid, and the excess of benefits, if any, only collected.

Award of benefits may be collected by suit.

9. That any person or persons to whom an award shall be made as aforesaid, subject to the deductions for benefits assessed as aforesaid, may sue for and collect the said award after the same shall have been confirmed as aforesaid, in an action of debt against the said board in any court of competent jurisdiction, and a certified copy of the award so made shall be presumptive evidence of the claim sued upon.

Board may collect assessments with interest and costs, by suit.

10. That it shall be lawful for the said board to collect the assessments for benefits so made as aforesaid, either by a suit in an action in debt in the name of the said board against the person or persons from whom such assessment is due, together with the costs of making the same, and interest at the rate of six per centum per annum from the date of confirmation, or by a sale of the property benefited, or by both of the said remedies, which are to be cumulative, and every such assessment shall be a first lien upon the property benefited as ascertained by the said commissioners, to the amount of the assessment so made as aforesaid, with the interest and cost from the date of the confirmation of such assessment.

Notice of intention of applying to court for commissioners to determine benefits from improvements.

11. [Amended by Chapter LI, Laws 1899, to read as follows:] That whenever said board shall determine to make any improvement of any part or section or of the whole of a parkway or boulevard therefore laid out or opened by said board, which improvement may consist in grading, or in any manner of paving or surface construction or in planting with trees or shrubbery, or in any one or more, or in all of the items of construction or

improvement which are or may be authorized by law, the said board shall give notice by publication, at least ten days in one or more of the newspapers circulating in the county wherein the lands to be condemned are situate, of its intention to apply to the circuit court of the said county for the appointment of three disinterested commissioners to ascertain, fix and determine the amount of the special benefits which the improvement determined upon and specified or described in such notice will confer upon any property benefited thereby; and at the time and place specified in such notice the said court shall appoint three disinterested freeholders, resident in said county, to make a just and true estimate and appraisement of the special or peculiar benefits which the said improvement may confer upon any property benefited thereby in proportion, as nearly as may be, to the benefit which each property may be deemed to acquire; and the said commissioners, when so appointed, shall forthwith take and subscribe an oath or affirmation faithfully and impartially to perform the duties imposed upon them by law, and such oath or affirmation shall be filed in the office of the clerk of said county; and the said commissioners shall fix a time and place when they will hear the persons interested in the property and in the benefits to be conferred by the proposed improvement, of which time and place public notice shall be given by the said commissioners, for at least ten days prior to the day of meeting, in two or more of the newspapers published and circulated in the said county; and after having viewed the premises and heard the parties interested, the said commissioners shall proceed to ascertain and determine the amount of special or peculiar benefits conferred upon the owners of property benefited by the said

Duties of commissioners.

Make report.

Duty of court
upon hearing
report.

Confirmed
report final.

opening or improvement, in proportion, as nearly as may be, to the benefits which each owner shall be deemed to acquire, and to make report of their assessments to said court; and upon the coming in of any such report, signed by the said commissioners, or any two of them, the said court shall cause such notice to be given, as it shall direct, of the time and place of hearing any objections that may be made to such assessment; and after hearing any matter which may be alleged against the same the said court shall, by rule or order, either confirm the said report or refer the same to the same commissioners for revision and correction; and the said commissioners shall return the same, when referred to them again, corrected and revised, or make new report thereof to the said court without unnecessary delay; and the same, on being so returned, shall be confirmed or again referred by the said court in manner aforesaid, as right and justice may require, and so from time to time until a report shall be made or returned in the premises, which the said court shall confirm; and such report, when so confirmed, shall be final and conclusive as well upon the said board of commissioners as upon the owners of any land and real estate or rights therein affected thereby, and the said court shall thereupon cause said report so confirmed to be filed in the office of the clerk of said county, there to remain of record; and the said court shall have power and authority to make such rules for the regulation of the practice and procedure under this act as shall be deemed expedient and consistent with its provisions; the said court shall, upon application made by the said board, or on its behalf, fix and determine the compensation to be paid the commissioners so appointed, and

allow any other expense necessarily incurred in making any such assessment, all which shall be paid by the said board of park commissioners; *provided, however,* that the cost and expense of making any assessment for benefits, including the fees of commissioners, may be included in making up the entire cost for the purpose of such assessment.

Proviso.

12. That any and all assessments which may be made under and by virtue of this act for benefits conferred shall be and remain liens upon the lands and real estate benefited as aforesaid, from and after the time when the same shall be confirmed, and any such lien shall remain until the same shall be fully paid; and if any such assessment shall remain in arrear for a period exceeding six months after confirmation, suit may be brought for its collection as aforesaid with interest and costs, and the said board may proceed to advertise said lands and real estate upon which any assessment may be a lien to be sold at public auction at the court house of the said county, on some day not less than two months distant, between two and five o'clock in the afternoon; that such advertisement shall be published at least once each week for a space of at least three weeks next preceding the said sale, in two of the newspapers published and circulating in the said county; such advertisement shall be the only notice required, and shall contain the names of the owners of land in default, if the same be known, if not, shall state the name of owners to be unknown, and shall give the amounts due from them respectively, with a short description of the lands and real estate to be sold, and at the time and place of said sale, said lands and real estate shall be openly sold to the person or persons

Assessments to remain liens until paid.

Suit may be brought after six months.

Sales for assessments shall be advertised.

Term for which
lands shall be
sold.

Proceedings in
case of non-
compliance.

Certificate of
sale shall be
authenticated
and duly
acknowledged.

Certificate shall
be recorded,
and may be
assigned.

who will take the same for the shortest period of time, not exceeding fifty years from the date of sale, and pay to the said board before the close of the sale the full amount due upon said unpaid assessments, with interest thereon from the time when the same was confirmed, at the rate of six per centum per annum, together with such sum as the said board may fix and determine to be a fair proportion of the expenses of advertising, conducting and making such sale; in the event that any purchaser shall neglect or refuse to make payment aforesaid, he shall forfeit all claim to said lands and real estate, and the same shall be resold by the said board upon like advertisement as aforesaid; the said board may adjourn any such sale from time to time by making proclamation thereof, and proceed therewith on the adjourned day, and the said board shall make and deliver to any purchaser at any such sale, who shall have made payment as aforesaid, a certificate of sale, signed by its officers thereunto duly authorized, and sealed with the seal of the said board, which certificate shall be acknowledged or proved according to law, and shall set forth as concisely as may be, the facts of said assessment, advertisement and sale, together with a short description of the lands and real estate sold, the amount actually paid therefor by the purchaser and the length of time for which he shall have purchased the same; every such certificate shall, before its delivery, be recorded in one of the books to be kept by the board for this purpose; such certificate may be assigned by deed of assignment under seal, duly acknowledged as aforesaid, and every such assignment may be recorded in the books of said board upon the payment of a fee of

one dollar therefor; every owner of land and real estate so sold, his, her or their legal representatives, or any mortgagee or mortgagees thereof, or any judgment creditor or creditors, having a legal or equitable interest therein, may, by payment to the said board, for the benefit of the said purchaser, his heirs or assigns, of the amount originally paid by the said purchaser, and of any tax or assessment which such purchaser may have paid, and of which he may have given written notice to the said board, with interest on all such payments at the rate of ten per centum per annum, redeem the said lands from the lien so imposed, but in case no such redemption is made the said board shall, at the expiration of the said period of three years, upon the surrender of any such certificate, execute and deliver to the purchaser, his legal representatives or assigns, a declaration of sale, to be executed in the same manner as the certificate of sale, and to be duly proved or acknowledged, stating therein briefly the facts of said assessment, advertisement and sale, giving a short description of the lands and real estate sold, and the time for which the same was sold; said declaration of sale shall be recorded in the books of the said board, and also in the record of deeds in the office of the register of said county, upon the payment of a fee of one dollar in each case; and until the recording of such declaration the time for redeeming said lands and real estate shall remain open, notwithstanding the expiration of the said term; every such declaration of sale shall be presumptive evidence in all courts and places that such sale and proceedings were in all respects regular and according to law; and such purchaser or purchasers, his, her or their legal representatives, shall, by

Owners may redeem lands, otherwise declaration of sale shall be executed.

Declaration shall be recorded.

Lands and real estate may be redeemed until recorded.

Purchaser may lawfully hold against owner.

Purchaser shall
be liable for in-
jury or waste.

Mortgagee may
redeem.

Mortgagee
shall be notified
of liens and
assessments.

And may collect
amount paid.

Unsold lands
shall be struck
off to the board.

virtue thereof, lawfully hold and enjoy such lands and real estate, with the rents, issues and profits thereof, for his, her or their own proper use against the owner or owners thereof, and all persons claiming under them, until the said term mentioned in the said declaration shall be fully completed and ended; every such purchaser so holding shall be liable for any injury or waste done or committed in the same manner and to the same extent as a tenant for years, but no mortgagee whose mortgage shall have been recorded or registered before any such sale shall be divested of his rights in and to the said lands and real estate, unless after notice shall have been given to him by any such purchaser for a period of six months (such notice to be in writing), such mortgagee shall neglect to redeem the said lands and real estate by paying the amount actually paid by such purchaser, including taxes, and including assessments subsequently made, with interest at the rate of six per centum from the date of payment, and also any costs or charges which he may have been by law obliged to pay; notice to every such mortgagee shall be served personally, if he be a resident of the said county, if not, it shall be addressed to him by mail at his place of residence, as stated in the said mortgage or any assignment thereof; every such mortgagee holding a lien on lands sold redeeming as aforesaid, may collect the amount paid as a part of the debt due, and every such person shall be entitled to receive and hold by assignment the declaration of sale as evidence of such payment, and as further security for the repayment of the sum so paid, with interest.

13. That lands and real estate which are not bid off and sold when offered for sale, or for re-sale,

according to the provisions of this act, shall be struck off to the said board by its corporate name, for the longest term for which such sale is authorized to be made, and said board may hold said lands and real estate and sell, assign and dispose thereof and use the proceeds of the same in the same manner as directed in the case of moneys paid for benefits assessed, and such board shall have in relation to the said lands so struck off to it all the right and privileges of a purchaser at such sale.

14. That to meet the expenses incurred under the provisions of this act in addition to the sum of money received from benefit assessments as herein provided and otherwise, the board of chosen freeholders of the said county shall, from time to time, on the requisition of said board of park commissioners, in the name and on the credit of the said county, borrow money by issuing the bonds of the said county to a sum in the aggregate not exceeding two millions five hundred thousand dollars, such bonds to run for a term not exceeding fifty years, to bear interest at a rate not exceeding four per centum, payable semi-annually; such bonds shall not be sold or disposed of at less than their par value, and may be made payable at any place which the said board of chosen freeholders may determine, and they shall also determine the form of the bond; a sinking fund shall be established by the said board of chosen freeholders on the issuing of any such bonds sufficient, with the accumulations thereof, to extinguish the principal of the said bonds so issued when due; the interest and principal of all bonds issued under the authority of this act shall be the debt or obligation of the county wherein they are issued and the payment thereof

Chosen freeholders may issue bonds to meet expenses incurred by the board.

Bonds shall not be sold for less than par value.

Chosen freeholders shall establish sinking fund.

shall be provided for by taxation in the same manner that other debts and obligations of the county are provided for by taxation.

Sinking fund commissioners shall have custody of funds.

Fund shall be provided for in tax levy.

15. That where sinking fund commissioners exist in any county in which such board of park commissioners shall be appointed under this act, and any such bonds issued, such sinking fund commissioners shall have the care and custody of the funds to be provided for the extinguishment of such bonded debt, but if no sinking fund commissioners shall exist therein, then it shall be the duty of the board of chosen freeholders of such county to provide for the care of such fund, and it shall be the duty of the officers of the county charged by law with the raising of moneys for county purposes to provide annually in the tax levy for the interest which may fall due during the succeeding year on any bonds issued under the authority of this act, and also each year to provide by taxation a fund sufficient, with the amount received from benefit assessments by the said board of park commissioners which shall be turned over for this purpose by said commissioners, and the accumulations of the sinking fund thus provided, to pay and extinguish the principal of all such bonds when they mature.

Lands held for parks shall be forever kept open as such.

Railroads forbidden therein.

16. That all lands taken or held under this act for the purpose of public parks shall be forever kept open and maintained as such; and no steam or other railroad shall be laid out on, or maintained or operated in or on, any portion of the parks, open spaces, boulevards, parkways or roadways laid out and located under this act, except at such places and in such manner as the said board of park commissioners shall in writing duly approve.

17. That every such board shall have power and authority to make rules and regulations for the government and use of all such parks, open spaces, boulevards, parkways and roadways, and to enforce the same by prescribing and affixing for the violation thereof suitable penalties, not exceeding fifty dollars for each offense; such rules and regulations shall be plainly printed and posted within such parks and public places or on such boulevard and other highways; and the said board shall have power and authority to sue for and collect the penalty prescribed and affixed for any violation of the rules and regulations so made in an action of debt in any court of competent jurisdiction; all fines and penalties recovered as aforesaid shall be used by the said board for the same purposes and in the same manner as other funds provided for its use.

Board shall make and enforce rules and regulations, and post the same.

And shall have power to collect penalties.

18. [Amended by Chapter 234, Laws 1903, to read as follows:] Any county board having control of any street, avenue or road within such county, and any city or municipality within such county, or any local board in such city or municipality, having control of the streets or parks therein, is hereby authorized and empowered to transfer the care, custody and control of any park, public place or street under its care or control to the said board of park commissioners for the purposes of this act, with its consent, which consent such board of park commissioners is hereby authorized to give.

Municipalities may transfer care of parks to commissioners appointed under this act.

19. That upon the appointment of commissioners in any county under the first section of this act, the commissioners appointed in any such county under the act entitled "An act to establish boards of county park commissioners, and to define their

When powers of other commissioners shall terminate.

powers and duties," approved May eighth, one thousand eight hundred and ninety-four, shall turn over to the board appointed under this act all their maps, plans and other property, and their powers shall terminate, except for the purpose of closing up their work.

Repealer.

Proviso.

Act not to take effect until so determined by an election.

How election shall be conducted.

20. That all acts and parts of acts both general and special inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately; *provided, however*, that none of the foregoing provisions shall take effect in any county, nor shall the commissioners to be appointed under the provisions of this act be appointed in any county until the acceptance or rejection of this act shall have been submitted, as herein provided, to a popular vote; such submission shall be made, and the vote hereinafter provided for taken, at the next election, whether general, municipal or special, wherein the people of all the county, qualified to vote, are authorized to vote for local officers, and it shall be the duty of the county clerk, at least ten days before any such election, to give public notice by publication in two or more newspapers published and circulating in the county that such submission will be made at the ensuing election, stating briefly the question to be submitted as herein provided, and it shall be the duty of the said clerk to provide ballots sufficient in quantity for the legal voters of the said county, not less than five to each legal voter as the number of voters appears by the last preceding election, and make distribution thereof as far as practicable in the manner provided by law for the distribution of other ballots at such election; every such ballot shall contain either the words "for the new park bill" or the words "against the new park

bill," and an equal number of each kind of ballots shall be so printed and distributed; and the legal voters of said county may at such election decide upon the acceptance or rejection of this act by the use of such ballots; such ballots shall be cast at such election, separate and distinct from other ballots used at such election, and shall not, except as herein provided, be regulated by the laws regulating ballots used in the election of public officers; such ballots, however, shall be deposited when offered without being enclosed in an envelope by any legal voter in the ballot boxes used at such election for the election of public officers; and all ballots so cast for or against this act shall be counted, and the result thereof returned by the election officers holding such election as herein provided, and the acceptance or rejection of this act shall be determined by the result of such election, and if there shall be found on a canvass of all the votes cast to be made as herein provided, a majority of ballots in favor of this act, then this act, but not otherwise, shall take effect immediately in such county; the return and certificate of the result of the votes cast in every election district or voting precinct in such county for and against the acceptance of this act shall be filed forthwith after the close of the said election by the officers conducting the same, with the clerk of the county wherein such election is held, and it shall be the duty of such clerk to tabulate the said returns and canvass the votes so cast in all the election districts in said county and certify upon such tabulated statement the number of votes cast for the acceptance of this act and the number of votes cast against the acceptance of this act, and he shall file such tabulated statement, with his certificate thereon in his office there to remain

Result of election to be filed, and certified to presiding justice

of record; and it shall be the duty of the said clerk, within five days after the filing of such tabulated statement and certificate, in case the same shall show that this act has been accepted in such county, to deliver a certified copy of the said tabulated statement and certificate to the justice of the supreme court presiding in the court of such county; and it shall be the duty of the said justice within ten days thereafter to appoint the commissioners which he is authorized by this act first to appoint; all expenses incident to this election, properly certified by the president judge of the court of common pleas of such county, shall be paid by such county wherein such election is held as other election expenses therein are paid.

21. That this act shall take effect immediately as regards the submission thereof to a popular vote as aforesaid.

Approved March 5, 1895.

Adopted at an election held April 7, 1895, by the following vote:

For	19,530
Against	11,079
Majority	8,451

CHAPTER VIII.

LAWS 1898.

A Supplement to an act entitled “An act to establish public parks in certain counties in this state, and to regulate the same,” approved March fifth, one thousand eight hundred and ninety-five.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. That to meet the further expenses to be incurred under the provisions of the act to which this is a supplement, for the acquisition, development and improvement of parks and parkways or boulevards, in any county in this state in which said act shall be in force, and in which the sum limited in said act shall have been appropriated, the board of chosen freeholders of the said county shall, from time to time, on the requisition of the said board of park commissioners, in the name and on the credit of the said county, borrow money by issuing the bonds of the said county to a sum not exceeding, in the aggregate, one million five hundred thousand dollars, over and above the sum provided in the act to which this is a supplement; such bonds to run for a term not exceeding fifty years, to bear interest at a rate not exceeding four per centum, payable semi-annually; such bonds shall not be sold or disposed of at less than their par value, and may be made payable at any place which the said board of chosen freeholders may

Board of freeholders authorized to issue bonds.

Sinking fund
established.

Principal and
interest of
bonds: how
paid.

determine, and they shall also determine the form of the bond; a sinking fund shall be established by the said board of chosen freeholders on the issuing of any such bonds sufficient, with the accumulations thereof, to extinguish the principal of the said bonds so issued, when due; the interest and principal of the bonds issued under the authority of this act shall be the debt or obligation of the county wherein they are issued, and the payment thereof shall be provided for by taxation in the same manner that other debts and obligations of the county are provided for by taxation; the proceeds of the sale of said bonds, after deducting expenses for negotiating the same, and for engraving and all other expenses connected with their issue and sale, shall be paid over to the said park commission.

Repealer.

2. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed and this act shall take effect immediately; *provided, however*, that no bonds shall be issued in any county pursuant to this act until the said act shall be accepted by the voters of said county by a majority of the votes cast for or against the same at the next election, whether general, municipal or special, on a day when the people of all the county qualified to vote are authorized to vote for local officers; and it shall be the duty of the county clerk at least ten days before any such election to give public notice by publication, in two or more newspapers published and circulating in said county, that such submission will be made, stating briefly the question to be submitted, as herein provided, and it shall be the duty of the said county clerk to provide ballots sufficient in quantity for the legal voters of the said county, not less than three to

Act to be ac-
cepted by voters

Duty of county
clerk.

each legal voter as the number of voters appears by the last preceding election, and make distribution thereof, as far as practicable, in the manner provided by law for the distribution of other ballots at such election; every such ballot shall contain either the words "for further park bonds" or "against further park bonds" and an equal number of each kind of ballots shall be so printed and distributed; and the legal voters of said county may at such election decide upon acceptance or rejection of this act by the use of such ballots; such ballots shall be cast at such election separate and distinct from other ballots used at such election, and shall not, except as herein provided, be regulated by the laws regulating ballots used in the election of public officers; such ballots, however, shall be deposited, when offered, without being enclosed in an envelope, by any legal voter, in the ballot-boxes used at such election for the election of public officers; and all ballots so cast for or against this act shall be counted and the result thereof returned by the election officers holding such election as herein provided, and the acceptance or rejection of this act shall be determined by the result of such election, and if there shall be found on a canvass of all the votes cast, to be made as herein provided, a majority of ballots in favor of this act, then this act, but not otherwise, shall take effect immediately in such county; the return and certificate of the result of the votes cast in every election district or voting precinct in such county for and against the acceptance of this act shall be filed forthwith after the close of the said election by the officers conducting the same, with the clerk of the county wherein such election is held, and it shall be the duty of such clerk to tabu-

Ballot.

Ballots; how counted and result of election determined.

Iate the said returns and canvass the votes so cast in all the election districts in said county and certify upon such tabulated statement the number of votes cast for the acceptance of this act, and the number of votes cast against the acceptance of this act, and he shall file such tabulated statement with his certificate thereon in his office, there to remain of record.

Approved February 21, 1898.

Adopted at an election held April 12, 1898, by the following vote:

For	14,737
Against	9,954
Majority	4,783

CHAPTER LIII.

LAWS 1902.

A Further Supplement to the act entitled "An act to establish public parks in certain counties in this state and to regulate the same," approved March fifth, one thousand eight hundred and ninety-five.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. To meet the further expenses to be incurred under the provisions of the act to which this is a further supplement, for the acquisition, development and improvement of parks and parkways, in any county in this state in which said act shall or may be in force and in which the sum limited in said act and in any supplement thereto shall have been already appropriated, the board of chosen freeholders of the said county shall, from time to time, on the requisition of the said board of park commissioners, in the name and on the credit of the said county, borrow money by issuing the bonds of the said county to a sum not exceeding, in the aggregate one million dollars over and above the total amount theretofore issued, such bonds to run for a term not exceeding fifty years, to bear interest at a rate not exceeding four per centum, payable semi-annually; such bonds shall not be sold or disposed of at less than their par value, and may be made payable at any place which the said board of chosen freeholders may deter-

Additional bond
issue authorized

Amount.

Time; rate.

Sinking fund.

mine, and they shall also determine the form of the bond; a sinking fund shall be established by the said board of chosen freeholders on the issuing of any such bonds sufficient, with the accumulations thereof, to extinguish the principal of the said bonds so issued, when due; the interest and principal of the bonds issued under the authority of this act shall be the debt or obligation of the county wherein they are issued, and the payment thereof shall be provided for by taxation in the same manner that other debts and obligations of the county are provided for by taxation; the proceeds of the sale of said bonds, after deducting expenses for negotiating the same, and for engraving and all other expenses connected with their issue and sale, shall be paid over to the said park commission.

Repealer.

Proviso.

Referendum.

2. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, and this act shall take effect immediately; *provided, however,* that no bonds shall be issued in any county pursuant to this act until the said act shall be accepted by the voters of said county by a majority of the votes cast for or against the same at a general election which shall be held in such county, and the question of the acceptance of this act shall be submitted to the voters of such county at any general election whenever the park commission of such county shall, by resolution, determine thereon, and shall at least thirty days before the date of such general election file a copy of such resolution with the clerk of such county, and the question of the acceptance of this act shall be voted upon in the manner required by law.

Approved March 28, 1902.

Adopted at an election held November 4, 1902,
by the following vote:

For	15,888
Against	12,248
Majority	3,640

CHAPTER LVII.

LAWS 1902.

A Supplement to the act entitled "An act in relation to county expenditures," approved April second, one thousand eight hundred and seventy-eight.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

Amount to be raised for park system.

1. In ordering, in each year, the amount of money to be raised for county purposes, the boards of chosen freeholders of the several counties of this state in which a county park system shall have been or shall hereafter be adopted and created, shall declare the amount necessary to be raised for the purpose of maintaining the public parks and roads or parkways built in connection with the public park system, which amount shall be not less than one-half of one mill on the dollar, nor more than three-fourths of one mill on the dollar, of the assessed valuation of the taxables and ratables of the said county, and that the amount so declared and raised by taxation shall be paid over to and expended by the commission, board, or other authority in the said county, which shall, at the time of such taxation, be duly authorized to control and maintain such public parks or park system, including the roads or parkways built in connection with such public park system; *provided, however*, that if in any year the park commission shall certify to the board of chosen freeholders that a less

Proviso.

amount is needed for the maintenance of the park system during that year than a sum equal to one-half mill on every dollar of county valuations, and also the exact amount necessary to maintain the parks during that year, then the board of chosen freeholders shall raise for that year the sum so certified by the park commission in the place and stead of a sum equal to one-half of a mill on every dollar of county valuations; but the board of chosen freeholders shall not be governed by the provisions hereof in any county of this state until after the approval of this act by a majority of the votes cast at a general election, which shall be held in such county upon the question of the approval of this act, which question shall be submitted to the voters of such county, in the manner provided by law, whenever a request in writing for such submission shall have been filed with the county clerk of such county at least twenty days before the day of such general election, by the commission, board or other authority having the control and maintenance of the county parks; and this act, when so approved, shall thereafter govern and control the appropriation for park maintenance in such county.

Referendum.

2. This act shall take effect immediately.

Approved March 28, 1902.

Adopted at an election held November 2, 1902,
by the following vote:

For	16,379
Against	12,088
Majority	4,291

New Jersey Supreme Court.

JAMES P. ROSS,

Prosecutor,

v.

THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY OF
ESSEX, and THE ESSEX
COUNTY PARK COMMISSION.

Defendants.

I. Invalidity in the provision of "An act to establish public parks in certain counties in this State and to regulate the same," approved March 5, 1895 (Genl. Stat. 2618), as to the appointment of the members of the Board of Commissioners therein authorized, will not render the statute invalid. In such a case the constitutional provision (Art. VII, Sect. II, par. 9), for the appointment of officers by the governor with the advice and consent of the Senate is operative.

2. On certiorari to review the action of the Board of Chosen Freeholders of a county, for the issue of bonds, under said act, or its supplements, on the requisition of a Park Commission organized thereunder, this Court cannot inquire into the title of the members of the Commission. Being a *de facto* Board, such title cannot collaterally be questioned.

ON CERTIORARI.

Before Justice Collins, at Chambers, by consent under section 295 of the Practice Act.

For the Prosecutor, HENRY YOUNG.

For the Chosen Freeholders, JOSEPH L. MUNN.

For the Park Commission, CHARLES L. CORBIN.

Collins, J. The writ in this cause removes a resolution adopted by the Board of Chosen Freeholders of the County of Essex and approved by the County Supervisor. It was thereby determined and resolved to comply with a requisition of the Essex County Park Commission made January 6, 1903, upon said Board of Chosen Freeholders, to borrow money in the name and upon the credit of the county by issuing bonds to meet the expenses to be incurred for the acquisition, development and improvement of parks and parkways by said Commission. The authorizing legislation is "An act to establish public parks in certain counties in this State and to regulate the same," approved March 5, 1895 (Genl. Stat. 2618), and the supplements of February 21, 1898 (Pamph. L. 19), and March 28, 1902 (Pamph. L. 202).

The stipulation of the parties establishes that the original act and these two supplements were accepted by popular vote according to their terms, and that the case falls within the conditions of the latest supplement. An amendment of March 20, 1899 (Pamph. L. 92), which was not required to be and was not submitted to the voters, has no bearing on the questions now raised.

The prosecutor attacks the resolution solely on the ground of unconstitutionality in the legislation above cited. It is stipulated that no notice of intention to apply for such legislation as local or special was published and, therefore, in order to

be valid it must be held to be general, for it clearly regulates the internal affairs of the counties affected, and such regulation, under the constitution, must, when possible, be by general laws. Generality in this instance is denied, on the claim that a basis of population is not legitimate in classifying counties when legislating as to public parks, and on the claim that counties coming, by increase of population, into the class selected, will not have an opportunity of acceptance, because the submission to popular vote is directed to be made at the "next election." If considered general its validity is challenged on the ground that the appointment of the authorized Board of Commissioners by a Justice of the Supreme Court would be an exercise by a person belonging to one department of the government of a power properly belonging to one of the other departments—which is forbidden by the constitution.

This Court in 1898 decided that a mandamus would lie to compel the issue of bonds under the supplement of that year, to which the one of 1902 is parallel. This judgment was affirmed on writ of error. (*Freeholders of Essex v. Park Commission*, 33 Vroom, 376.) This Court has also dealt with, as valid, condemnations of land under the original act. (*Rimback v. Essex Park Commission*, 33 Vroom, 494.) True, the question of constitutionality may not have been raised, in either case, by the parties. I judge that it was not, but the Court *ex mero motu* could have raised it; and, as Mr. Justice Dixon, in the later case of *Renner v. Holmes*, 53 Atl. Rep. 76, remarks, the statutes "were sustained." It would seem only decorous that some contrary deliverance should come from the Court of Errors and Appeals before this Court

should assume that the judgment of that Court was inconsiderate.

Against the objection of lack of generality I would have no difficulty in sustaining the legislation. Public parks, I think, have such fair relation to populousness as to make the line of demarcation fixed by the legislature on that basis a proper one; and I fully accede to the suggestion in *Renner v. Holmes*, *ubi supra*, that the provision for submission to vote of the original act, at the election next after its approval, is merely directory. In the same line is the case of *Albright v. Sussex County Lake and Park Commission*, 53 Atl. Rep. 612, 617. The act will be available in every county which shall acquire the prescribed population.

The other objection, if the recent decision of this Court in *Schwarz v. Dover*, 53 Atl. Rep. 214, and a *dictum* in *Morean v. Freeholders of Monmouth*, 53 Atl. Rep. 208, shall be approved by the Court of last resort, would seem to be fatal—not necessarily to the entire statute of 1895, but to the method thereby prescribed for the appointment of the authorized officers.

I think that the provision for the appointment of such officers, in a particular way, even if itself invalid, did not render invalid the otherwise perfect statute. Such provision is fairly separable from the main scope of the law.

If the method of appointment attempted to be valid, well and good; if not, then no method was adopted. In that case the constitution itself is operative. By Article VII, Section 2, of that instrument, after provision for certain designated officers, it is, in paragraph 9, provided as follows:

“9. All other officers, whose appointments are not otherwise provided for by law, shall be nomi-

nated by the Governor and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law.”

I think that this provision was designed to extend to all offices to be created by statute. Had the Park Commission act been silent as to how the commissioners authorized should be appointed, I entertain no doubt that their appointment would have lain with the Governor on the Senate’s advice and consent. Such must be precisely the effect of an abortive attempt to provide for a different mode of appointment.

This being so, the principles governing action of officers *de facto* must apply in this case. The decision of this Court in *Van Reypen v. Jersey City*, 19 Vroom, 428, seems directly in point. There the contention was that the legislature had abrogated a previously existing method of appointing members of a city board and had not constitutionally substituted any other method of appointment. This court held that the acts of the *de facto* board could not collaterally be questioned. In this State the doctrine of the validity for all purposes of the action of officers *de facto* is explicit and is fully sustained by the court of last resort. (*Brinkerhoff v. Jersey City*, 35 Vroom, 225).

It was not open to inquiry, in any way, by the Board of Chosen Freeholders of the County of Essex, nor, except in a direct proceeding, by this Court, how the members of the Essex County Park Commission were appointed. That commission is a *de facto* body holding office under color of law. It has been entrusted with bonds of the County of Essex to the extent of four millions of dollars—a large part of which came under the express sanction of this Court. It has been recognized as ex-

istent by the legislature in the cited act of 1902. Its requisition, therefore, on the Board of Chosen Freeholders was valid, however infirm may be the title of its members.

The resolution under review is affirmed with costs.

New Jersey Court of Errors and Appeals.

March Term, 1903.

JAMES P. ROSS,

v.

THE BOARD OF CHOSEN FREE-

HOLDERS OF THE COUNTY OF

ESSEX *et al.*

} *Error.*

The County Park Act approved March 5, 1895 (G. S. p. 2618), authorizes the appointment, by a justice of the Supreme Court, of commissioners to lay out public parks in any county having a population exceeding two hundred thousand, but provides that the act shall not go into operation in any county unless the voters of the county accept it, and it directs certain officers to take steps for submitting the question of acceptance to the voters at the next election.—Held:

(1) That the distinction drawn between the more populous counties and the others is legitimate for the purposes of the act:

(2) That the provision for the submission at the “next election” is directory only, and the act may be accepted at a subsequent election, and may be

accepted in counties which acquire the designated population after the passage of the act:

(3) That the legislature had constitutional authority for conferring upon a justice of the Supreme Court the power of appointing the park commissioners.

MR. HENRY YOUNG for the plaintiffs in error.

MR. JOSEPH L. MUNN for the Board of Chosen Freeholders.

MR. CHAS. L. CORBIN for the Essex County Park Commission.

The opinion of the Court was delivered by Dixon, J.

This writ of error brings under review the judgment of the Supreme Court entered on the opinion of Mr. Justice Collins, reported in 53 Atl. Rep. 1042, to which reference is made for the facts of the case.

The only questions discussed in argument here relate to the constitutionality of "An Act to establish public parks in certain counties in this State and to regulate the same," approved March 5, 1895 (G. S. p. 2618).

One of the objections urged against the Act is that, because it is limited to counties having a population exceeding two hundred thousand it is a special regulation of the internal affairs of counties, and thus violates Article IV, Section 7, Paragraph 11 of the Constitution.

But we think the legislature may divide counties on the basis of their population for the purpose of enabling the more populous to lay out public parks. Densely settled communities have the greater need for these open spaces, to which the inhabitants may

resort for refreshment, and, hence, there is a rational connection between the basis of classification and the purpose of the enactment. As was said in *Paul v. Gloucester County*, 21 Vroom, 585, 592, "Whether the basis of classification is wise "or judicious, or whether it will operate as fairly "as some other basis that might be adopted, is a "question for the legislature, and not for the "courts. The extreme limit of our inquiry in this "direction is does population bear any reasonable "relation to the subject to which the legislature has "applied it; is it germane to the law?" As this Act forms and deals with a legitimate class it is in this feature general.

Another objection presented is that the Act violates the same paragraph of the Constitution because, according to the words of the statute, it cannot take effect in any county unless the voters of the county accept it at the next election held after its passage, thus practically confining it to counties then having the designated population.

If this be the real meaning of the statute it must be adjudged unconstitutional under the rule laid down in *De Hart v. Atlantic City*, 34 Vroom, 233. But courts never approve an interpretation of a statute which will defeat its main purpose if there be any reasonable construction which will uphold it. *Atlantic City Water Works Co. v. Consumers Water Co.*, 17 Stew. Eq. 427.

The legislative design fairly expressed by this statute is that to the voters of every county having the required population should be tendered the right of accepting the benefits of the law, and in order to insure the enjoyment of this right the Act imposes certain duties upon the county officers and points out the time for their performance. But

there certainly is no clear declaration, and, therefore, it should not be believed that the legislature considered exact compliance with the method provided for securing the right as more important than the right itself. Our construction of the statute is that the provision for submitting the matter at the "next election" is directory; that in counties having the proper population when the Act was passed the local officers are directed to perform their duties with reference to the first election thereafter, and in counties subsequently acquiring sufficient population those duties will relate to the next election after such acquisition; but that in both cases the duties enjoined continue until performance; they cannot be discharged by neglect. *Albright v. Sussex Lake Commissioners*, 53 Atl. Rep. 612, 616.

A further objection to the validity of the Act is that, by requiring the appointment of the Park Commissioners to be made by a justice of the Supreme Court it violates Article III of the Constitution, which declares that "The powers of the government shall be divided into three distinct departments—the legislative, executive and judicial: and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided."

This article contains three clauses, a distributive clause—"The powers of the government shall be divided into three distinct departments—the legislative, executive and judicial": a prohibitive clause, "And no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging

“to either of the others”: and an excepting clause, “Except as herein expressly provided.”

The distributive clause cannot be read as the declaration of an abstract proposition, that the powers of government are naturally divided into legislative, executive and judicial departments; for the words indicate, not the powers of government generally, but “the powers of *the* government,” that is, the government then being formed, and a division not already existing, but one about to be made, “the powers of the government *shall* be divided.” Hence we must seek for the scope of the division primarily in the Constitution itself. The intended division is there plainly disclosed.

By Article IV, Section 1, Paragraph 1, “The legislative power is vested in a senate and general assembly”; by Article V, Section 1, “The executive power is vested in a governor”; and by Article VI, Section 1, the judicial power is vested in the courts. The division contemplated by Article III relates, therefore, only to such powers of the government as are to be exercised by the senate and general assembly, or by the governor or by the courts. But as was said in *Paul v. Gloucester County*, 21 Vroom, 611, “there is a multitude of governmental duties which have never been and cannot possibly be performed, either by the legislature, or by the governor, and which are certainly not prescribed by the Constitution to the judiciary.” Clearly the powers appropriate for the discharge of these duties must lie outside of the division intended by this clause of the Constitution. Among the powers thus excluded must be the power of appointing local officers, for it cannot be believed that this power, requiring for its proper exercise such diversity of knowledge respecting

local needs, was constitutionally devolved upon either of the departments designated. Nothing in the history of this, or of the mother country would suggest such a course.

The prohibitive clause of this Article calls for some consideration of "*The powers properly belonging to*" the several departments into which the powers of our government are divided, for the purpose of determining whether they include the power to appoint officers for the management of local concerns.

Here it should be noted that the force of this clause is, not to confine the legislature to powers which are legislative, the governor to powers which are executive, and the courts to powers which are judicial, but merely to forbid each department to encroach upon the powers properly belonging to another. The powers properly belonging to each of these departments and, therefore, forbidden to the others are those assigned under the general terms, legislative power, executive power, and judicial power, and also those specifically delegated by the Constitution to the senate and general assembly, or to the governor, or to the courts. But since in these specific delegations of power the appointment of local officers, as distinct from authority to provide for their appointment, is not mentioned, our consideration may be confined to the general terms employed.

The question presented is, Can the power of appointing to office be said, in our government, to belong properly to the legislature, or to the governor, or to the courts, so that its exercise by any, save one, of these departments is prohibited.

Under the English system of government it might be said that in a sense the King was the de-

positary of the power of appointing to public office, "the fountain of honor, of office, and of privilege," as Blackstone calls him. 1 Com. 271. But in our system there appears no indication that any single department of the government can be deemed the King's successor in this regard. Although in *State v. Parkhurst*, 4 Hals. 427 (A. D. 1802) Chief Justice Kirkpatrick decided that the governor being invested with "the supreme executive power" had authority to fill a vacancy in the office of the Clerk of the Common Pleas arising during a recess of the legislature, yet he considered this power not as inherent and absolute, but as created and limited by the necessities of the case, so that it would yield to any other provision made by the legislature. In *Police Commissioners v. Pritchard*, 7 Vroom, 110, it was claimed that the governor of the State had succeeded to this branch of royal authority, but Chief Justice Beasley said, "My consideration of the questions involved in this inquiry has entirely satisfied me that there is not the least propriety in the assumption that the authority of our executive over public offices, is at all comparable with that of the English king."

An examination of our constitutional and legislative history will dissipate the idea that the power of appointing to office is the peculiar property of any one of the three departments of our government.

Under our Constitution of July 2, 1776, the only department on which was directly conferred any power of appointing officers was the legislative, consisting of the Council and Assembly. This was authorized to appoint the governor, attorney general, secretary and treasurer of the province, the field and general officers of the militia, and the

judges and clerks of the courts. No provision was made for the appointment of other officers except as it was embraced in the general power of legislation. Between that time and the adoption of our present Constitution, A. D. 1844, many statutes were passed under this general power; some actually appointing officers, some authorizing their appointment by the Council and Assembly in joint meeting, some by the governor and council, some by the governor alone, and some by the courts. Thus, an Act passed February 5, 1812, appointed three persons as commissioners to have charge of paving a street in New Brunswick. The Council and Assembly were authorized to appoint the Supreme Court Reporter by Act of March 12, 1806, the Surrogate by Act of November 28, 1822, Prosecutors of the Pleas by Act of December 11, 1823, the Clerk in Chancery by Act of February 14, 1831, the Chancery reporter by Act of March 13, 1832, and the inspectors of the State Prison by Act of February 27, 1838: the governor and council were authorized to appoint Commissioners of pilotage by Act of February 8, 1837: by sundry acts passed between January 30, 1799, and December 27, 1826 the governor was authorized to appoint notaries public, inspectors of various kinds of food, and Commissioners of deeds: and by other acts passed between November 12, 1790, and February 27, 1838, he was authorized to fill vacancies in the offices of U. S. Senator, of representative in Congress, of presidential elector, of surrogate, and of State Prison inspector: and by Act of November 9, 1822, the Courts of general quarter sessions were authorized to appoint prosecutors of the pleas.

In the same interval the Constitution of the United States was adopted, by which the power of

appointing officers was conferred, partly upon the executive alone and partly upon the executive and a branch of the legislature, but with this express reservation that the Congress might by law vest the appointment of inferior officers in the president alone, in the courts of law, or in the heads of departments.

In view of this situation it seems improbable that the members of the convention which framed the Constitution of 1844 could have regarded the power of appointing officers as one properly belonging to any of the three departments mentioned; and when we examine the instrument which they framed, the improbable becomes the incredible. For by it, the power to appoint the major generals of the militia, the justices of the Supreme Court, Chancellor, judges of the Court of Errors and Appeals, Attorney General, Prosecutors of the Pleas, Clerk of the Supreme Court, Clerk of the Court of Chancery, and Secretary of State is vested in the governor, acting in conjunction with the Senate; the power to appoint the *adjutant general*, the *quartermaster general* and some other militia officers is vested in the governor alone: the power to appoint the judges of the Court of Common Pleas, State Treasurer, the keeper and inspectors of the State Prison is vested in the legislative department, and the power to appoint the Court reporters is vested in persons belonging to the judicial department. Thus the power of appointment was expressly distributed by the Constitution itself among all the departments of the government and it, therefore, cannot be believed that within the meaning of the prohibitive clause of this Article the power properly belonged to any one of those departments.

But there is still another aspect of the matter. If by the unrestrained force of either the distributive or the prohibitive clause of this Article the power of appointing officers could be considered as assigned exclusively to any one of these departments their significance is restricted by the closing words of the Article, "except as herein expressly provided."

This compels an examination of the rest of the Constitution, for express exceptions to the preceding clause of the Article. Such exceptions are readily discoverable. Thus the power of remitting fines and forfeitures, and granting pardons, which historically may be deemed a branch of the executive authority is conferred upon the governor and certain members of the judicial department; the power to try, convict and pass judgment in cases of impeachment, which is a judicial function, is conferred upon the Senate. But the exception now directly pertinent is found in Article VII, Section 2, Paragraph 9, declaring that "all other officers, whose appointments are not otherwise provided for by law, shall be nominated by the governor and appointed by him with the advice and consent of the Senate." This is an unmistakable recognition of the authority of the law making department to provide for the appointment of all officers whose appointment is not definitely regulated by the Constitution itself.

If, therefore, we had reached the conclusion that the power of appointing officers was because of its nature covered by the distributive or prohibitive clause of Article III, we must nevertheless have conceded that, by force of the exception in that Article, and of the paragraph last above mentioned, the legislature was authorized to make such

different provision for the exercise of that power as it deemed proper, respecting the officers embraced in that paragraph.

There is yet another clause of the Constitution which should be noticed. Article VII, Section 2, paragraph 1, declares that "The justices of the "Supreme Court, and Chancellor . . . shall hold "no other office under the government of this State "or of the United States."

In *Supervisors of Election*, 114 Massachusetts, 247, the justices of the Supreme Court of Massachusetts held that a provision in the Constitution of that State forbidding the judicial department to exercise executive or legislative powers prevented the delegation to the justices of the power to appoint supervisors of election because that was not a judicial function, and the justices were not at liberty to hold any other office than that of justice.

We cannot apply this view to our constitutional provisions. We have endeavored to show that the power to appoint officers does not properly belong to any single department of our government and we cannot regard the right to exercise a new function as the possession of a new office. Such a view would give to the word *office* a broader significance than it should receive in such a context as accompanies it in our Constitution where it is spoken of as something to be held, not as something to be done. It would imply that whenever a new duty is cast upon an officer he receives a new office. It would render unconstitutional the act of a justice of the Supreme Court in the naturalization of aliens under the United States laws, for such an act is the exercise of a federal function, distinct from the office of a justice of the State. Indeed, it is difficult to see how it could comport with those nu-

merous statutes passed since 1844, which have increased the powers and burdens of these judicial officers and have been upheld and enforced in all stages of litigation.

But even if we should accept the view of the Supreme Court of Massachusetts on this topic, we are still confronted with the clause above mentioned which empowers the legislature to provide by law for the appointment of officers, and, reading these two clauses together we do not find any clear implication that the discretion confided to the legislature without express limitation is so restricted that it may not vest in the justices of the Supreme Court or the Chancellor the appointment of officers unconnected with their judicial function.

It is our duty to adjudge all acts of the legislature, which are not clearly in violation of the Constitution, valid.

We have not thought it necessary to extend this opinion by a discussion of the numerous decisions on cognate subjects in other states, because we think the question turns upon the meaning of our own fundamental law in its entirety, interpreted chiefly by the history of our own Commonwealth. Among the adjudications in this State, there are but two which may be said to antagonize the conclusion we have reached. In one, *In re Cleveland*, 22 Vroom, 311, a contrary view was expressed *obiter* by Chief Justice Beasley, sitting alone, and in the other, *Schwarz v. Dover*, 53 Atl. Rep. 214, the Supreme Court was largely influenced by the dicta in the earlier case, and the significant feature in Article VII, Section 2, paragraph 9, was not noticed.

The County Park Act of March 5, 1895, is constitutional, and, therefore, the judgment of the Supreme Court is affirmed.

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